

1 I advise them to speak with counsel. Obviously, the rules
2 have changed from 1992, for menus or licenses, things like
3 that. And, so, again, there's always been one area that a
4 lot of SMR operators have always had difficult areas in.

5 Q If I understand correctly, what you're saying is,
6 the area of system maintenance and loading, generally, you
7 would not advise clients, but recommend that they consult
8 with an attorney and try to do their record keeping in that
9 area?

10 A That's probably one of the biggest problems that
11 SMR operators have. If you have -- you're almost serving
12 two masters there. One is the use of the system, as I see
13 systems. You could take a channel and maybe have 30 users
14 on it, hypothetically, okay. And, you can't -- the number -
15 - the amount of time left to use the system is very minimal.
16 There's times that you have maybe as many as 70 users per
17 channel, and you could still put some additional people on
18 it. It all depends on culture, their language, their
19 operation, the type of business, where they're located,
20 things like that.

21 So, the amount of users will vary. I like to talk
22 to them about managing the time. In other words, looking at
23 drive times. There's a very busy part of the morning where
24 you're driving to and from work or going home at night. The
25 system loads up. We look at different schedules as far as

1 what is left to use? I mean, how many people can you really
2 put on a station?

3 Public utilities are extremely critical with that
4 when you get into a storm situation. It's kind of hard to
5 build a system entirely just for a storm system, but you
6 almost have to, because that's when they really need it.

7 Q Do your clients typically have separate systems
8 for one billing and on the other hand, system maintenance
9 and loading? Do you determine your --

10 A Usually not. They usually try to base it off the
11 same package and take snapshots from time to time to
12 determine what their actual loading. They know what is
13 usability. Their customers tell them, hey, I tried to get
14 on the system five times today and I couldn't get on, you
15 know, or ten times, because it was busy. They call that
16 cuing, where you're not able to get use of the system.

17 Q You referred to snapshots a moment ago. Could you
18 please describe in a little more detail what you mean by a
19 snapshot?

20 A At a point in time, you need, in other words, for
21 specific loading purposes, it does not keep historical data
22 for any length of time. So, in other words, if you want to
23 know what the loading was for yesterday, you could go in
24 there probably for the last three or four days, depending on
25 how busy your system is, and take a snapshot and say, okay,

1 based on between seven and eight in the morning, there is
2 only, out of 60 minutes, there is only maybe five minutes
3 the system wasn't being used.

4 Q Okay.

5 A Or, it can give you the number of calls that were
6 made. I had a system in California that basically, normally
7 there were like 19,000 calls a day on a ten-channel system.
8 During a disaster, storm-type situation, it went up to
9 43,000. I'm not sure what -- if you could help me
10 understand a little better --

11 Q I'm trying to understand what you meant here, the
12 distinction between system maintenance and loading, to use
13 your term, systems and billing systems.

14 CHIEF JUDGE CHACKIN: You have a question about
15 that?

16 MR. SCHAUBLE: No, Your Honor, I'm trying to
17 explain to the witness.

18 THE WITNESS: There's only so much capability.
19 Unless we had some Government computers in some location to
20 keep track of. You know, like you have one system that has
21 19,000 calls in a day out. That's going to take a lot of
22 computer space to keep track of that for any length of time.
23 For instance, San Diego Gas & Electric. They only keep
24 track of theirs for probably a week at most.

25 BY MR. SCHAUBLE:

1 Q What type of information are you referring to?

2 A The loading, you know. I'm assuming that when you
3 talk about system maintenance, you're talking about the
4 operation of the system itself.

5 Q Okay, is that how you mean it when you write it
6 here?

7 A In loading, yes. In other words, you're not --
8 I'm not understanding what you're wanting to get at here.
9 If you're talking --

10 Q Let me ask, did you write this testimony?

11 A I had dictated it.

12 Q Okay. What do you mean by loading?

13 A Loading is the use of numbers of minutes in a day
14 which relates back to the people that are using the system.

15 Q So, you're not --

16 A To me, the purest, the best way to describe how a
17 system is really used is how many minutes are left within an
18 hour period that you didn't use the system? And, if you
19 have a system over a 60-minute period of time and out of 60
20 minutes, there's only maybe three minutes that were used,
21 not used, in other words, they were used for a full 57
22 minutes, there's not much more people you could put on it.

23 Q So, when you use loading, you refer to the actual
24 use of the channel as opposed to the number of mobile units
25 who may be authorized to use that channel, correct?

1 A A lot of SMR operators use that as a basis for
2 giving quality service, because obviously, if there's only
3 three minutes left in an hour that weren't being used and
4 you maybe have 3,000 calls, that's tenths of seconds in
5 between calls that are not being used. So, they have to use
6 that.

7 I mean, otherwise, they're going to charge
8 somebody for something they can't use. And, how can -- you
9 know, that's not fair. It would be like me charging you,
10 renting you a car, but saying you could only use it Friday
11 night after 11 p.m. at night, almost. Is that what you're
12 trying to get at? Help me understand, please.

13 Q Mr. Hanno, turn to the first sentence of paragraph
14 eight. Is it not possible using Mr. Kay's billing system to
15 reconstruct a snapshot of system loading for a particular
16 day. Do you see that?

17 A Yes.

18 Q Am I understanding now that by system loading, you
19 mean the number of minutes in a given hour that a particular
20 channel would use?

21 A That's part of it, or if you want to have in his
22 situation, have a programmer come in and rework the package
23 and try and pull off the numbers of units that are on the
24 system. Even that isn't necessarily 100 percent accurate,
25 but it gives you a better idea on it. In other words, those

1 records are only kept for a certain period of time. Now --

2 Q Is it correct on Mr. Kay's system, those records
3 are kept until the information is changed, is then
4 overwritten?

5 A That is overwritten for the actual accounting
6 records. Let's say that you have a plumbing business or a
7 construction business, and you're here in Minnesota and you
8 work your construction pretty much from March to November,
9 and when the snow comes, the ground freezes, instead of
10 using 20 units, you may go down to 15 or 14. So, it will --
11 once you change it back down to 14, it does not remember
12 that there were 20 units out there.

13 Q Okay.

14 A Again, keep in mind, these are normal billing,
15 accounting records, and they're concerned about making sure
16 that whatever money is due for next month's service is kept
17 track of. And, then, for IRS, of course, then it's a matter
18 of gross amount of money. They don't care how many units
19 you have. So that it's normal accounting records, no
20 different than if you sold 20 shovels this month and 40
21 shovels next month.

22 Q Now, have you at times made certifications to the
23 FCC concerning loading?

24 A Usually at the time of licensing, but from time to
25 time, yes.

1 Q Have you provided as to what sort of records to
2 keep, so they can make those certifications?

3 A Normally, they take a snapshot at a specific time.
4 You know, if they're going to prepare a license or whatever,
5 they'll say, okay, I'm going to apply for more licenses on
6 January 1. Well, usually, probably, December 1, they're
7 going to take a snapshot and see where they're at, or
8 December 15, and they'll have that as a record and showing
9 of what the actual loading is or numbers or that type of
10 thing.

11 Q Would the snapshot be in the form of a business
12 record, either computer or paper record?

13 A Usually a paper record, yes. Once a license is
14 issued, then, of course, then that paper record is of no
15 importance to them anymore.

16 Q Would the --

17 A I think most of the time our operatives feel as
18 though once they submit it to the FCC, the FCC has it on
19 file.

20 Q Is it your understanding that when a certification
21 is made, the copy of the actual business record was
22 submitted to the FCC?

23 A At times, not always, I wouldn't think so. I
24 think that varies. I don't think there's any standard there
25 at all. I don't think the FCC gives any standard to people

1 or a guideline of what to do there. I think they just ask
2 you to certify. Some people submit it, some people don't.

3 Q Turn to paragraph nine, Mr. Hanno. My question to
4 you is, in your experience, are your clients readily able to
5 determine what call sign or call signs are associated with a
6 particular repeater?

7 A Well, for the repeater itself, yes, but for the
8 individual clients' call signs, not necessarily. Of course,
9 that's changed. Now, it's a situation they would have to go
10 into each individual customer file and look up that
11 information at that point in time. They usually requested
12 in the old days a copy of the license, which, of course, now
13 has changed. They would have to pull that information out.
14 I would just set up a client file for ABC Plumbing and if
15 you wanted to review their licenses or where they were at,
16 you'd have to go back into that file. It's not necessarily
17 on the computer.

18 Of course, the numbers of units change. I mean, I
19 would think the numbers of businesses that started out with
20 five licenses ten years ago are still using -- five units or
21 mobiles -- are still using five mobiles or portables. I
22 would think that would be a very rare case, so that would
23 change.

24 Q Let me ask you the question, Mr. Hanno. Is it
25 correct that your clients would readily be able to determine

1 the call sign associated with the repeater, correct?

2 A Yes.

3 Q But, a client wouldn't necessarily be able to
4 determine what repeater or repeaters a particular client was
5 on?

6 A No, they'd be able to do that by the billing
7 record, sure. I mean, it shows the number of individual
8 sites they used. On James Kay's situation, it actually
9 lists the number of sites that's coded in there to show --
10 as I said before -- it may be on as many as three different
11 sites.

12 Q So, it's correct that this would not be a
13 difficult process?

14 A You would have to go through each individual
15 account, or have, hire the programmer to come in and write -
16 - you have the information in the database and they would
17 have to write a procedure to go ahead and try and calculate
18 it.

19 Your question -- I feel uncomfortable with the
20 answer, because I'm not really understanding your question.
21 But, if I understand you correctly, let me try and come up
22 with the question for you --

23 Q Well, let me ask it. My question is, typically
24 for your clients, would it be a difficult process to
25 determine what call sign or call signs a given customer was

1 operating on?

2 A They would have to go through the individual paper
3 files and determine what sites and what their -- in the old
4 days, what their licenses were, their license call signs
5 were. It would take a process -- like in Jim's case, he's
6 got, what, 8,000 or 9,000 accounts? So how long would it
7 take a person to go through those 8,000 or 9,000 accounts,
8 files, file folders? Then, how would you add in -- Jim does
9 a lot of community service work. I know he's -- I was there
10 when the Boy Scouts came and used radios for a Pow-Wow they
11 had. Or, I know the Red Cross has come in from time to time
12 or the Kiwanis or Lions Club. And, all SMR operators get
13 hit up to help with the local function service.

14 I've even had the police department come to me for
15 extra radios.

16 MR. SCHAUBLE: Your Honor, I move to strike this
17 as non-responsive.

18 THE WITNESS: Well, I was trying to understand
19 your question. It wasn't clear to me.

20 CHIEF JUDGE CHACKIN: The motion is denied. Go
21 ahead. You asked a general question about call signs, how
22 difficult it is to obtain that information. The witness
23 gave you examples of why it's so difficult to get the
24 individual accounts, customer accounts. Also, you're
25 dealing with situations where radios are given freely

1 because of community reasons. The witness has told you
2 that. You asked for it.

3 MR. SCHAUBLE: Your Honor, may I approach the
4 witness?

5 CHIEF JUDGE CHACKIN: Yes.

6 BY MR. SCHAUBLE:

7 Q Mr. Hanno, I'm handing you and directing your
8 attention to Section 90.443 of the Commission's rules. Have
9 you had an opportunity to review it, sir?

10 A Briefly. I didn't read it verbatim.

11 Q Take as much --

12 CHIEF JUDGE CHACKIN: What do you want him to look
13 at?

14 MR. SCHAUBLE: Rule 90.443.

15 THE WITNESS: 90.443.

16 CHIEF JUDGE CHACKIN: The entire one?

17 MR. SCHAUBLE: The entire rule.

18 CHIEF JUDGE CHACKIN: All right, we'll go off the
19 record and permit the witness to read that.

20 (Whereupon, a short recess was taken.)

21 CHIEF JUDGE CHACKIN: All right, back on the
22 record. Go ahead with your questions, Mr. Schauble.

23 BY MR. SCHAUBLE:

24 Q Mr. Hanno, have you had an opportunity to review
25 Sections 90.443 and 90.215 of the Commission's rules?

1 A Briefly, yes.

2 Q Do you recognize that those rules together require
3 licensees to keep certain types of records concerning
4 maintenance of equipment?

5 A Yes.

6 MR. KELLER: Objection, Your Honor. I don't mind
7 the witness answering his understanding. I just want it to
8 be clear that this witness is not an expert in legal
9 matters. So, he was just testifying as to his
10 understanding.

11 CHIEF JUDGE CHACKIN: Go ahead with your question.

12 MR. SCHAUBLE: Okay.

13 BY MR. SCHAUBLE:

14 Q Mr. Hanno, are you familiar with how SMR operators
15 keep the records required by these rules?

16 A I can tell you what they do in actual practice,
17 and then you can relate it to the rules, okay? They -- when
18 someone goes out, if there's a problem with a specific
19 repeater transmitter frequency, they will send someone up
20 there to determine very quickly what is wrong with it. If
21 it looks like it's anything major whatsoever, they will take
22 an in-stock unit, which Mr. Kay has, and plug it in, tune it
23 to a frequency, and take the old one back to the shop and
24 work it and repair it.

25 That generates an invoice, a hypothetical invoice,

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1 that is charged against one company or the other, and, at
2 that point in time, so they have a complete paper record
3 file of each individual unit that has come or gone. So, if
4 they send Bob, the technician, up there and he determines
5 that -- actually, if you have customers that are wanting to
6 use the system, they're not going to take a lot of time to
7 try and repair it while the system is down. They'll take a
8 unit, stick it in there, pull the other one out, they'll
9 write it on the invoice, and then hypothetically charge it
10 against the other company.

11 Now, whether it goes through the books or not, I
12 did not track the accounting portion of that, whether they
13 do that or not.

14 Q Okay, do operators, do SMR operators, as a general
15 matter, keep track of the person who would perform this sort
16 of work?

17 A Usually the person that fills out the work order
18 or job tech invoice usually signs it or initials it. They
19 know Truck No. 12 went up there with Tech 4 or Bob and Old
20 Blue. That would vary, depending on the company.

21 Q Typically, are transmitter measurements made when
22 a new transmitter is installed?

23 A Usually, they are made at the bench level, because
24 the amount of equipment you would need to have in every
25 truck going around, not everybody has the full regimentation

1 of equipment.

2 More importantly, as it's an ideal situation,
3 where they can take and test -- there are several test
4 points they have to do within a repeater to make sure that
5 it's operating properly. And, most, I would say 95 percent
6 of the shops, would prefer to do that in the shop instead of
7 at a power site, to be able to make sure that it's done
8 properly and right. They will probably maybe reprogram the
9 frequency, because most of the radios nowadays do not have
10 crystals, most of them are synthesized.

11 So, changing a frequency, you may have -- I don't
12 know what the total number of channels Jim has in his
13 system, but they can reprogram the frequencies just by using
14 a laptop or sometimes through diodes, changes, that type of
15 thing. So, the measurements that you are talking about
16 normally are done within the laboratory at the shop --

17 Q Okay.

18 A -- on the test bench.

19 Q Do you have an understanding of when these types
20 of measurements were made on the repeater in Mr. Kay's shop,
21 what type of records he keeps of these measurements?

22 A They fill out kind of like a work order job
23 ticket, and keep track of it from that standpoint.

24 Q Do you know what sort of information was contained
25 in this work order?

1 A Model number, serial number, what the measurements
2 were and any problems they had to do to correct whatever.
3 If they had to replace Q27 transistor or put in a new final,
4 things like that. I'm sure that that's all noted on the
5 work order. I think that their engineer probably could
6 answer that much better than I could.

7 Q Have you actually reviewed the work order?

8 A Did I pull those out of the file? No, I did not.
9 They explained it to me, and that was pretty much standard
10 within the industry, so it wasn't necessary for me to, you
11 know, pull out their records and audit it.

12 Q Mr. Hanno, are you familiar with what sort of
13 records, if any, SMR operators use to replace a new station,
14 the repeater and operations for the first time, and
15 distinguishing that from the situation of replacing?

16 A It's identical. It's pretty much a job ticket is
17 written up, a work order, whatever you want to call it, and
18 it basically shows the unit, because a lot of times that
19 triggers inventory; and then from there, then it shows what
20 they tune it up, check the power out, check the receiver
21 sensitivity, things like that, modulation.

22 So the procedure, whether it's a brand new piece
23 of equipment or a return from the mountaintop, they do
24 identically the same.

25 Q Are you aware, Mr. Hanno, that from time to time,

1 allegations are made that stations have not been constructed
2 in a timely fashion?

3 A Yes, I have.

4 MR. KELLER: Are you talking, counsel, in general?

5 MR. SCHAUBLE: In general, yes.

6 BY MR. SCHAUBLE:

7 Q Are you familiar with what sort of records
8 operators would keep in order to defend themselves against
9 such allegations?

10 MR. KELLER: Objection on relevance grounds,
11 unless there's a specific Commission rule that certain
12 records be kept.

13 CHIEF JUDGE CHACKIN: Is there a rule requiring
14 records to be kept?

15 MR. SCHAUBLE: Your Honor, 90.215(a)(1) requires
16 records when the transmitter is initially installed.

17 CHIEF JUDGE CHACKIN: That's not the question you
18 asked.

19 MR. SCHAUBLE: Well, I was asking him that.

20 CHIEF JUDGE CHACKIN: Well, the witness answered
21 the question, whether it was maintenance or installation of
22 a new transmitter, it's all the same. The way SMRs handle
23 it. I don't know, what are you asking him now? What do you
24 mean by construction?

25 MR. SCHAUBLE: When a station is constructed for

1 the first time, Your Honor.

2 CHIEF JUDGE CHACKIN: What are you asking about
3 it?

4 THE WITNESS: Is that different than when it's
5 first installed or constructed? I think the intent of the
6 question is different. I'm reading it differently. I don't
7 know.

8 CHIEF JUDGE CHACKIN: I'll sustain the objection.
9 Perhaps you can ask in a different way. The witness doesn't
10 understand the question.

11 BY MR. SCHAUBLE:

12 Q Mr. Hanno, in the industry, when a station is
13 first constructed, are any records kept, do operators keep
14 any sort of records other than the work orders you testified
15 about previously?

16 A Not that I'm aware of.

17 Q Have you ever provided advice to clients
18 concerning what sort of records to keep when stations are
19 constructed or maintained?

20 A Any time I got into a situation like that, I would
21 explain to them exactly the way I did it for myself, for all
22 the Government work I did. I would fill out a job ticket,
23 invoice, work order, whatever you want to call it, and I
24 would explain the date, the model number, the serial number,
25 the power out, the unit, what tests were done.

1 We went a step further in my shop, because I did a
2 lot of Government work, what the readings were before. We
3 put it on the bench, and let's say it had 25 watts out and
4 it should have 75. We'd show 25 and then we'd adjust it to
5 50 or 75 whatever it be.

6 Do I audit my clients' books? No, I'm not an
7 auditor.

8 Q The question was, do you give them advice as to
9 how to keep these books?

10 A I suggest that every time they touch a piece of
11 equipment, that they write out a job ticket, work order,
12 work sheet, whatever you want to call it.

13 Q Turn to paragraph 12 of your testimony. Mr.
14 Hanno, my question is, when equipment is operating, do you
15 know that when the situation, if there's another station
16 operating on the input frequency of the different channel,
17 whether the operation of this device is on a secondary basis
18 to the other station?

19 A What --

20 MR. KELLER: Objection. I'm wondering about the
21 foundation. I think the record in this case is different
22 from the assumption underlying the question. The only
23 evidence we have in this case is that the station in
24 question was an exclusively licensed YX station. The
25 station complaining of interference was more than 70 miles

1 away.

2 So, it's irrelevant using your last expert's
3 opinions based on, you know, facts for which there's a
4 foundation in the record.

5 MR. SCHAUBLE: Your Honor, first of all, it's the
6 Bureau's contention that the fact that the station was more
7 than 70 miles away is irrelevant. Under the rules, our
8 position is that this station had a duty to protect other
9 operations regardless of the distance, and since this
10 operation is not a secondary, not interference-based to
11 other operations.

12 MR. KELLER: The protection under the rules is 70
13 miles, a YX station, within its 70 mile radius, is an
14 exclusive operation.

15 MR. SCHAUBLE: Well, with respect to this
16 particular style of operation, Your Honor, the 70-mile
17 limitation does not apply.

18 MR. KELLER: I have no objection to him answering
19 the question, I guess, but I just wanted that clarified on
20 the record.

21 CHIEF JUDGE CHACKIN: Answer the question. Do you
22 need it repeated?

23 THE WITNESS: Well, it didn't really make a lot of
24 sense. Why don't I explain how the unit works?

25 BY MR. SCHAUBLE:

1 Q I'm not interested in how the unit works, Mr.
2 Hanno. What I'm interested in is, do you have an
3 understanding that if there's another operation and input
4 frequency on a different channel, whether such operation
5 would have to protect that other operation?

6 A I'm not an attorney. I'd have to refer that to
7 the attorney.

8 (Pause.)

9 Q Okay. Mr. Hanno, you're familiar with tape back-
10 ups, correct?

11 MR. KELLER: Objection. Is this within the scope
12 of the testimony?

13 MR. SCHAUBLE: Your Honor, it is. I'm going to
14 tie this into paragraph eight of the exhibit.

15 MR. KELLER: Okay, subject to making it relevant
16 to paragraph eight, I withdraw the objection.

17 CHIEF JUDGE CHACKIN: Go ahead.

18 BY MR. SCHAUBLE:

19 Q Mr. Hanno, are you familiar with tape back-ups?

20 A Mm-hmm, yes.

21 Q Just for the record, you need to say yes or no.

22 A Yes.

23 Q And, do you know whether it is customary in the
24 SMR industry to keep -- to produce tape back-ups of billing
25 information?

1 A Normally, SMR operators will back-up their systems
2 after they do a billing process. Let's say, on the first of
3 the month, you will run your invoices. They'll process the
4 month's charges, run the invoices and then prepare some kind
5 of a back-up. Not necessarily tape, but they'll try to come
6 up with something.

7 And, at that point in time, they'll keep it until
8 the next month and then they will overwrite it and back-up
9 the next month's process. Depending on the SMR operation,
10 they may back it up once a week and overwrite. Again,
11 that's an accounting practice that varies depending on the
12 number of accountants that are out there. They're all going
13 to do something different there.

14 There is no standard. How often do you back up
15 your computer at home? I want to answer it more, but I'm
16 not -- okay, sorry.

17 MR. SCHAUBLE: One moment, Your Honor.

18 CHIEF JUDGE CHACKIN: All right, let's go off the
19 record.

20 (Discussion held off the record.)

21 CHIEF JUDGE CHACKIN: Back on the record.

22 MR. SCHAUBLE: No further questions, Your Honor.

23 CHIEF JUDGE CHACKIN: Any redirect?

24 MR. KELLER: Very briefly, Your Honor.

25 REDIRECT EXAMINATION

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1 BY MR. KELLER:

2 Q Mr. Hanno, you testified that you spent most of
3 your time reviewing Jim's computer billing system, I
4 believe. And, very little looking at paper records. But,
5 isn't it true that you did look at representative samples of
6 Mr. Kay's business records?

7 A Yes, I did. I mean, he opened up everything to
8 me. I mean, I could have gone in any file cabinet, looked
9 at anything. I did pull out a few of the paper files. What
10 was on the computer seemed to match what was in there.

11 Q Did the records you looked at include things like
12 work orders, invoices and --

13 MR. SCHAUBLE: Objection, leading.

14 CHIEF JUDGE CHACKIN: Overruled.

15 BY MR. KELLER:

16 Q -- repeater service agreements?

17 A I looked at a handful of work orders that had just
18 come out of the repair shop and I kind of went through them,
19 and they looked standard like any other shop around the
20 country.

21 Nothing that I saw created a feeling that I should
22 look any deeper, because it looked the same as everybody
23 else did it.

24 Q And, in addition to giving you access to his
25 files, Mr. Kay gave you access to his staff?

1 A Yes, unlimited access.

2 Q What was the name of the company that you said
3 referred you to Mr. Kay?

4 A It was a manufacturer in Fargo, North Dakota by
5 IDA.

6 Q Now, Mr. Schauble asked you about the extent to
7 which you had ever advised clients on record keeping
8 practices. My question is, to the extent that you have
9 advised clients on record keeping practices, has the purpose
10 of such advice been for purposes of maintaining proper
11 business and accounting records, or has it been for purposes
12 of complying with regulatory requirements?

13 A Proper, normal business accounting records. I
14 mean, everything that I see, it seems like that's what the
15 FCC refers to as normal, business accounting records, so I
16 try to make sure that their businesses are run solid. My
17 concern is the business survives. They get the money and
18 they charge the people a fair amount and they're fair to
19 their customers and give them good services.

20 Q I'm not asking you for a legal or regulatory
21 opinion, but just for your knowledge, but do you have any
22 knowledge whether the FCC has ever enunciated any specific
23 standards or format regarding how loading records are to be
24 maintained?

25 MR. SCHAUBLE: Objection, Your Honor.

1 CHIEF JUDGE CHACKIN: Overruled.

2 THE WITNESS: It's very vague and almost every SMR
3 operator says, has the same feeling. Everybody says, okay,
4 I'm going to keep good business accounting records. They
5 feel that if they can make the IRS happy, they should
6 probably be able to make the FCC happy.

7 MR. KELLER: No further questions.

8 CHIEF JUDGE CHACKIN: Do you have any further
9 questions?

10

11 RE-CROSS-EXAMINATION

12 BY MR. SCHAUBLE:

13 Q Mr. Hanno, what document is your understanding of
14 what the FCC requires based on?

15 A Usually, at the time of your adding for additional
16 channels, they want to know that you have used or have
17 proper usage of the existing channels.

18 Q Okay, Mr. Hanno, my question is different. My
19 question is, you stated an understanding of what the FCC
20 wants and requires. What is that understanding based on?

21 A That if you do good, normal business accounting
22 records, that should be adequate to -- because I have not
23 seen anything out of the FCC as far as actual, specific
24 rules like you do, like you fill out a 1040A this way, go to
25 Line A, B or whatever it is, to fill it out that way. I

1 have not seen it. So, everything it seems to be as its
2 normal, business accounting records.

3 Q Is your understanding based upon an FCC document,
4 or trade practice, or conversations you've had with people?

5 A All of the above.

6 Q Do you recall any FCC documents you've read on
7 this matter?

8 A No, I don't recall them.

9 CHIEF JUDGE CHACKIN: Are there any FCC documents
10 on keeping records, the manner in which you're supposed to
11 keep records?

12 MR. SCHAUBLE: Your Honor, the FCC does not
13 require a specific format for records. What the FCC
14 requires is that that information be made available to it.

15 CHIEF JUDGE CHACKIN: But, you were talking about
16 the specific keeping of records, so what the witness is
17 saying is correct. Unlike the IRS, the FCC doesn't tell you
18 to keep records, or what records you have to maintain. Only
19 that you have to provide certain information if and when the
20 Commission asks for it.

21 MR. SCHAUBLE: Your Honor, there is one rule which
22 is 90.445 that deals with the form of the station records,
23 as discerned in 90.443.

24 MR. KELLER: Your Honor --

25 MR. SCHAUBLE: But, that doesn't deal with --

1 MR. KELLER: Your Honor, I asked the witness
2 specifically about loading records, and those two rules do
3 not address.

4 CHIEF JUDGE CHACKIN: Are there any rules on
5 loading records, how you're supposed to keep loading
6 records?

7 MR. SCHAUBLE: The material on this is kept in the
8 report and order, Your Honor.

9 CHIEF JUDGE CHACKIN: The report and order doesn't
10 set forth any specifics on how you're supposed to keep
11 loading records, does it? Whether you keep billing accounts
12 or whatever, does it?

13 MR. SCHAUBLE: There is no requirement that it be
14 kept in a specific way, Your Honor. The information has to
15 be available.

16 CHIEF JUDGE CHACKIN: I understand that, but
17 there's no requirement it be kept in a specific way, so it
18 could be kept in billing records, which may be more
19 difficult to ascertain, but there's no law that says you
20 can't do it that way, as far as I know, is there? The
21 Commission doesn't say what you can't do in keeping records
22 and what you can do in keeping records? All it says is,
23 when we want the information, we want you to provide it.

24 MR. SCHAUBLE: The information has to be available
25 when we ask for it.

1 CHIEF JUDGE CHACKIN: That's right. But, it could
2 be in paper records, billing records which you have to sift
3 through all the paper records to find it.

4 MR. SCHAUBLE: It could be in billing records, it
5 could be in the form of computer records.

6 CHIEF JUDGE CHACKIN: Well, then later on, when
7 you want the records, it may be more difficult to obtain
8 such records, if the FCC doesn't require you to keep it
9 separately.

10 MR. KELLER: Your Honor, I'll also dispute the
11 characterization that the FCC requires that the information
12 be available when they ask for it. Depending on the types
13 of licenses that we're talking about, a more proper, a more
14 accurate characterization, is the information may be
15 required, given certain things the licensee may be trying to
16 do.

17 In other words, when the licensee files certain
18 applications, that may require loading, but they could well
19 be, for example, a conventional licensee who is, you know,
20 operating a system that may not have any call to ever
21 present this information to the FCC, unless he files certain
22 applications or takes certain actions.

23 In other words, it's triggered by certain events,
24 depending on the type of license.

25 MR. SCHAUBLE: Your Honor, that's incorrect. As

1 we cited in the 1992 report and order, when the Commission
2 requests this information, it has to be made available.

3 MR. KELLER: When it's relevant. I'm saying the
4 situation is not relevant to anything. I agree that if it's
5 relevant to something that I'm doing. If I file an
6 application and that application requires that I be loaded
7 for another station within 40 miles, then by filing that
8 application, I've obligated myself to justify my loading to
9 the Commission. If they ask, indeed, I'll take it a step
10 further. I'm effectively certifying it by simply filing the
11 application. But, if I never filed the application, it is a
12 irrelevant point --

13 CHIEF JUDGE CHACKIN: You raised a question about
14 loading records. So, go ahead with your question. We can
15 get the legal argument when we get to the conclusion of the
16 case.

17 MR. SCHAUBLE: I think the witness -- maybe the
18 witness didn't answer the question.

19 CHIEF JUDGE CHACKIN: Well, the witness answered
20 the best he can, based on what information and instruction
21 the FCC gives. Go ahead.

22 MR. SCHAUBLE: I have no further questions, Your
23 Honor.

24 CHIEF JUDGE CHACKIN: All right. Do you have any
25 further questions?

1 MR. KELLER: No, I don't, Your Honor.

2 CHIEF JUDGE CHACKIN: All right, you're excused.

3 Thank you very much.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 CHIEF JUDGE CHACKIN: Who is the next witness?

7 MR. SHAINIS: Your Honor, the next witness is Mr.
8 Randy French.

9 CHIEF JUDGE CHACKIN: Is he here?

10 MR. SHAINIS: Yes, he is. Sir, I'd like to just
11 confer with Mr. French for about 20 seconds.

12 CHIEF JUDGE CHACKIN: All right, we'll go off the
13 record.

14 (Discussion held off the record.)

15 CHIEF JUDGE CHACKIN: Back on the record. Would
16 you raise your right hand, please?

17 Whereupon,

18 RANDOLPH FRENCH

19 having been first duly sworn, was called as a witness
20 herein, and was examined and testified as follows:

21 CHIEF JUDGE CHACKIN: Please be seated. Go ahead,
22 counsel.

23 DIRECT EXAMINATION

24 BY MR. SHAINIS:

25 Q Mr. French, could you state your full name for the

Heritage Reporting Corporation
(202) 628-4888

1 record?

2 A Randolph Scott French.

3 Q What is your residence address?

4 A 27301 Camp Twenty Road, Number 61, Canny Country.

5 MR. SCHAUBLE: Your Honor, I would just note an
6 preliminary matter. I noticed there are additional
7 witnesses.

8 CHIEF JUDGE CHACKIN: Do you want them in the
9 witness room?

10 MR. SCHAUBLE: Your Honor, there may be a certain
11 amount of overlap of testimony.

12 MR. KELLER: Well, Your Honor, the sequestration
13 order, we can argue it, but the sequestration order was
14 applicable to Bureau witnesses. All the Bureau witnesses
15 testified --

16 CHIEF JUDGE CHACKIN: Except, if they testify to
17 similar matters, I think it's perhaps best that they --

18 MR. KELLER: Okay, I'll show them to the room.

19 MR. SHAINIS: Your Honor, I'm still doing
20 background. Do you want me to wait until they leave?

21 CHIEF JUDGE CHACKIN: No, you can continue.

22 MR. SHAINIS: Okay, thank you.

23 BY MR. SHAINIS:

24 Q Mr. French, where are you currently employed?

25 A Southland Communications.

1 Q How long have you been employed there?

2 A It will be seven years in May.

3 Q So, you started in May, if my math is correct, of
4 1992?

5 A That's correct.

6 Q And, in May of 1992, you started your employment
7 with Southland. What was the position you had?

8 A Bench technician.

9 Q Explain for the record what a bench technician is,
10 please?

11 A What I did was work on radios that customers
12 brought in for repair and I repaired them or ordered parts
13 for them.

14 Q And, do you have the same position today?

15 A Yes.

16 Q So, you've had the same position throughout that
17 period of time?

18 A Correct.

19 Q In that period of time, an event occurred on
20 January 17, 1994, is that correct?

21 CHIEF JUDGE CHACKIN: What was the question?

22 MR. SHAINIS: An event occurred. I'm trying to
23 get background.

24 CHIEF JUDGE CHACKIN: In 1994?

25 MR. SHAINIS: January 17, 1994.

1 BY MR. SHAINIS:

2 Q Is that the date of the earthquake?

3 A I don't think it was the 17th, was it?

4 Q Well, do --

5 A I don't remember the exact date. I know it was
6 the month.

7 Q Do you remember the Northridge earthquake?

8 A Yes.

9 Q And, do you recall approximately when that
10 occurred?

11 A 4:31 in the morning.

12 (Laughter.)

13 Q We've got that down. Do you recall the month that
14 it occurred?

15 A It was in January.

16 Q Do you recall the year?

17 A Yeah, I think it was 1994.

18 Q Okay, thank you. And, first of all, was there any
19 damage done to Southland?

20 A Absolutely.

21 Q When I say Southland, just to clarify for the
22 record, Southland is also co-located with another business
23 owned by Mr. Kay and that's Lucky's, is that correct?

24 A Correct.

25 Q So, it's the same building?

1 A Correct.

2 Q Could you describe the damage that was suffered by
3 Southland, and when I say Southland, I'm including Lucky's,
4 to the extent that you know?

5 A Well, ceiling tiles broken down, light fixtures
6 from the ceiling falling, steel shelving units dominoed
7 over. Computers smashed, all kinds of parts inventory was,
8 had fallen all over the place.

9 Q Okay. And, was the damage extensive?

10 A I believe so, yes.

11 Q And, was the business in continuous operation
12 after the earthquake?

13 A No.

14 Q How long a time was it not in operation?

15 A I don't exactly remember how long. I believe it
16 was a week, a couple of days. I'm not sure.

17 Q Was there a rebuilding process that commenced
18 after the earthquake?

19 A Yes.

20 Q And, how long did that take?

21 A Well, to be honest, it's still going.

22 Q At the present time, is it substantially rebuilt?

23 A Substantially.

24 MR. SCHAUBLE: Objection to the term
25 "substantially rebuilt", Your Honor.

1 CHIEF JUDGE CHACKIN: Well, I think it would be
2 best if you could tell us in what way it's rebuilt?

3 THE WITNESS: Metal shelving units are brought up
4 to where they were. Inventory is placed back on the shelves
5 that were not damaged. Computers that were damaged were
6 replaced. Ceiling tiles repaired, light fixtures repaired.

7 CHIEF JUDGE CHACKIN: And, what remains to be
8 done? You said it's not complete.

9 THE WITNESS: Well, in the Tech Room, where I
10 work, a lot of inventory, such as components, diodes,
11 transistors and so forth, that had been tossed all over the
12 floor, those parts are now in a box, mixed up, where at one
13 time they were individually separated in bins. So, a lot of
14 times when I'm finding a part, I'd have to go into this box
15 to pick out the right part.

16 BY MR. SHAINIS:

17 Q Do you have any knowledge of the inventory radios
18 on hand at the business?

19 A I know of them, yeah.

20 Q You know that they exist, is that correct?

21 A Correct.

22 Q At the present time, could you venture to guess as
23 to how many radios are on hand, both used and new?

24 MR. SCHAUBLE: Objection, Your Honor, guessing is
25 not --

1 CHIEF JUDGE CHACKIN: Let's not get into guessing.

2 BY MR. SHAINIS:

3 Q I'm sorry, could you estimate?

4 A Estimate? Six, seven hundred, something like
5 that.

6 Q This is subsequent to the earthquake, at the
7 present time?

8 A At the present time, correct.

9 Q Prior to the earthquake, would you estimate that
10 there were more or less in the quantify --

11 MR. SCHAUBLE: For clarification, do you mean
12 immediately prior to the earthquake?

13 MR. SHAINIS: Immediately prior to the earthquake.

14 THE WITNESS: There were a lot more radios.

15 BY MR. SHAINIS:

16 Q When you say a lot more, can you be more definite?

17 A I would say, estimate around maybe 1,000, 1,500,
18 something like that.

19 Q Okay. As your job, do you work on repair of
20 loaner radios?

21 A Yes, I do.

22 Q You work on demos?

23 A Yes, I do.

24 Q Do you work on rentals?

25 A Yes, I do.

1 Q And, the figures that you gave, the estimates,
2 they comprise, I just want to make sure I'm correct,
3 loaners, demos, rentals and new radios, is that right?

4 MR. SCHAUBLE: Objection, leading.

5 CHIEF JUDGE CHACKIN: Overruled.

6 THE WITNESS: Yes.

7 BY MR. SHAINIS:

8 Q In the course of your employment, do you have
9 contact with Mr. James Kay?

10 A Yes, I do.

11 Q How frequently do you have contact with him?

12 A Numerous times a week, when he's there.

13 Q I understand. Did you observe any change in Mr.
14 Kay's behavior subsequent to the earthquake?

15 MR. SCHAUBLE: Objection, needs a foundation. You
16 need to ask --

17 CHIEF JUDGE CHACKIN: We'll sustain.

18 BY MR. SHAINIS:

19 Q Did you observe Mr. Kay's behavior prior to the
20 earthquake?

21 A Yes.

22 Q What was his behavior like?

23 MR. SCHAUBLE: Objection to the term "behavior".
24 I'm not sure --

25 CHIEF JUDGE CHACKIN: Well, I'll overrule the

1 objection and see where we go with this.

2 THE WITNESS: In comparison --

3 BY MR. SHAINIS:

4 Q Forget about comparison right now. Just tell me,
5 prior to the earthquake, how did he act?

6 A Like my boss. If I had a question, I went up to
7 him and asked him a question and he gave me an answer.

8 Q Using that as a basis, subsequent to the
9 earthquake, was there any change?

10 A More irritable.

11 Q Was he focused before the earthquake?

12 MR. SCHAUBLE: Objection, leading.

13 CHIEF JUDGE CHACKIN: Sustained.

14 BY MR. SHAINIS:

15 Q Did you observe any change in the way Mr. Kay
16 conducted his business, not necessarily directly with you,
17 you already said he was more irritable, but the way he
18 conducted his business subsequent to the earthquake?

19 MR. SCHAUBLE: Objection to "conducted his
20 business".

21 MR. SHAINIS: Well, the manner in which he
22 conducted a business.

23 CHIEF JUDGE CHACKIN: I'll overrule the objection.

24 THE WITNESS: Repeat the question again?

25 BY MR. SHAINIS:

1 Q Certainly. Could you describe for me, was there
2 any change in the way Mr. Kay conducted the business, his
3 business, the one you were working at, subsequent to the
4 earthquake?

5 A I was not directly interfacing with him during
6 that time. I mean, I'd ask him a question and that was
7 about it.

8 Q Okay.

9 A As far as working side by side with him, I wasn't
10 doing that. I had a general manager that I dealt with.

11 MR. SHAINIS: I understand. Just a moment.

12 (Pause.)

13 MR. SHAINIS: That's all, Your Honor.

14 CHIEF JUDGE CHACKIN: Any cross?

15 MR. SCHAUBLE: Very brief, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SCHAUBLE:

18 Q Good morning, Mr. French.

19 A Good morning.

20 Q You testified that your estimate, that currently
21 there are about 600 to 700 radios in Mr. Kay's inventory?

22 A Approximately.

23 Q Would those all be working radios?

24 A Correct.

25 Q Do you currently hand out units to customers?

1 A Do I, personally?

2 Q Yes?

3 A No.

4 Q Do you work out contracts with customers?

5 A No, I don't.

6 Q You repair radios, correct?

7 A Yes.

8 Q Do you have any knowledge currently as to how many
9 rental radios might be out at any given period of time?

10 A No.

11 Q Let me ask you, when rental radios go out, do
12 rental radios go out on a specific frequency or frequency
13 band?

14 A Yes.

15 Q Okay, what frequency band is that?

16 A I believe they're UHF.

17 Q Would that be 470 to 512?

18 A Right, yes.

19 Q Okay, now, do the rentals, do you program rental
20 radios?

21 A I have. We have an inventory of them that we
22 have.

23 Q Is there a specific frequency which is used within
24 the UHF band, which is used for rental radios?

25 A I believe the rentals that we are currently using

1 are on 500.

2 Q Are these conventional or trunk radios?

3 A They are conventional radios.

4 Q Okay. With 500 MHz, are you referring to the band
5 or were you referring to a specific frequency?

6 A Well, you asked me to be more specific. 500 MHz,
7 that's the frequency that they're placed on.

8 Q Now, back in 1994, would they have operated on the
9 same frequency?

10 A Yes.

11 Q So, there's always been, that frequency of 500 MHz
12 has always been the frequency that's been used for rental
13 radios?

14 A Yes, I believe so.

15 Q Now, you understand what I mean when I say
16 generally operate?

17 A Yes.

18 Q Now, what frequency did general repeaters operate
19 on?

20 A It depends on what the customer wants or what the
21 customer has, currently.

22 Q So, demo units could be either on the UHF band or
23 the 800 MHz band?

24 A Sure.

25 Q And, it could also be either conventional or

1 trunking units, correct?

2 A Right.

3 Q For the record, state your understanding of what a
4 demo unit is?

5 A A demo unit is a radio that we let a potential
6 customer use and get familiar with, which might help us sell
7 more of those same radios.

8 Q Do you have an estimate of how many demos there
9 might be used at any given time?

10 A Not really. We would probably have maybe one or
11 two out at one time.

12 Q To the best of your recollection, would that have
13 been through 1994?

14 A '94, before or after?

15 Q Immediately prior to the earthquake?

16 A It might have been a few more, but not many.

17 MR. SCHAUBLE: Thank you, Mr. French. No further
18 questions.

19 CHIEF JUDGE CHACKIN: Any redirect?

20 REDIRECT EXAMINATION

21 BY MR. SHAINIS:

22 Q Mr. French, do you have any duties involving sales
23 at all?

24 A No.

25 MR. SHAINIS: No further questions.